FILED
APR 22 1927
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM 1926.

No. 34

EQUITABLE TRUST COMPANY OF NEW YORK, as Trustee in Bankruptcy of Knauth, Nachod & Kuhne,

Petitioner,

against

CARL ROCHLING, *et al.*, Trading as GEBRUEDER ROCHLING,

Respondents.

BRIEF FOR RESPONDENTS

HENRY G. HOTCHKISS,
Counsel for Respondents,
120 Broadway,
New York City.

WILLIAM H. WHITE, JR.,
HENRY G. HOTCHKISS,
Of Counsel.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

INDEX.

PAGE

I. Respondents' Statement of the Case 1

II. Summary of Respondents' Argument 3

III. Argument 6

A. The words "for account of" and those directing payment through the New York Clearing House are restrictive, preventing the bankrupts from obtaining the title to the checks or their proceeds prior to the bankruptcy, and entitling the respondents to recover the traced proceeds held by the Trustee in Bankruptcy 3, 6

1. Early English Cases 3, 7

2. Modern English Rule 3, 7

3. Early American Federal and State Decisions 3, 8

4. The Decision of the Supreme Court in the case of *White v. Miners Nat. Bank* 9

5. Interpretation of the *White* case by subsequent decisions 4, 11

6. There is no difference in the restrictive effect between the words "for account of" and "for collection" 4, 14

7. Recognition of the rule in the *White* case by the New York Clearing House 4, 17

8. The words "for account of" are restrictive in the sense defined by the Negotiable Instruments Law 5, 18

PAGE

9. The effect of the restrictive wording was to prevent Knauth, Nachod & Kuhne obtaining title to the checks or their proceeds 5, 19

10. The words "Through the New York Clearing House", and "Payable only through the New York Clearing House" are also restrictive..... 5, 20

B. Nothing in the dealings of the parties nor in the circumstances surrounding the case in any way change the legal effect of the wording appearing on the checks..... 5, 23

1. Liability of Lloyd's Bank and the Swiss Bank 5, 24

2. The Speyer check..... 5, 26

3. The force of the restrictive wording is not affected by the crediting of the checks 5, 27

4. Entries relating to interest..... 5, 35

5. The facts in the present case bring it within the rule of *White* v. *The Bank* and not within the rule of *Burton* v. *The United States*..... 6, 39

Index of Cases Cited.

A.

PAGE

American National Bank *vs.* Miller (1913) 229 U. S. 517 37
Armstrong (In Re) (C. C. S. D. Ohio, W. D.) (1888) 33 Fed. 405 ..... 13, 17

B.

Bank of America *vs.* Waydell (1907) 187 N. Y. 115 15
Bank *vs.* Bank (1896) 118 N. C. 783 21
Bank of Metropolis *vs.* First National Bank of Jersey City (C. C. S. D. N. Y.) (1884) 19 Fed. 301 ..... 4, 15, 19
Bank of Sherman *vs.* Weiss (1887) 67 Texas 331 14
Beal *vs.* City of Somerville (C. C. A. 1st) (1892) 50 Fed. 647 ..... 5, 13, 17, 34
Blaine *vs.* Bourne (1875) 11 R. I. 119 ..... 3, 8, 16, 19
Burton *vs.* United States (1905) 196 U. S. 283 ..... 6, 29, 39, 40

C.

Cecil Bank *vs.* Bank of Maryland (1864) 22 Md. 148 16
Claflin *vs.* Wilson (1879) 51 Iowa 15 16
Clark & Co. *vs.* Americus National Bank (D. C. S. D. Ga.) (1916) 230 Fed. 738, 740 36
Commercial National Bank *vs.* Armstrong (1892) 148 U. S. 50, 57 ..... 4, 12, 15, 19
Coxe *vs.* Harden (1803) 4 East 211 ..... 3, 7

F.

Farmers Bank *vs.* Johnson King & Co. (1910) 134 Ga. 486 ..... 7, 21

PAGE

Fifth National Bank *vs.* Armstrong (C. C. E. D. Mo. E. D.) (1889) 40 Fed. 46.....6, 13, 17, 35
First National Bank *vs.* Armstrong (C. C. S. D. Ohio, W. D.) (1890) 42 Fed. 193.....13, 17, 36
First National Bank of Belmont *vs.* First National Bank (1898) 58 Ohio St. 207.....14, 18, 42
First National Bank *vs.* Reno Co. Bank (C. C. D. Kan.) (1880) 3 Fed. 257..... 16
First National Bank of Clarion *vs.* Gregg & Co. (1875) 79 Pa. 384..... 14
Foley *vs.* Hill (1858) 2 H. L. 28..... 8
Freemans National Bank *vs.* National Tube Works (1890) 151 Mass. 413..... 14, 15
Freiberg *vs.* Stoddard (1894) 161 Pa. 259..... 14

H.

Hackett *vs.* Reynolds Lamberton Co. (1886) 114 Pa. 328 14
Hook *vs.* Pratt (1879) 78 N. Y. 371..... 41

J.

Jarmulowsky (In Re) (C. C. A. 2nd) (1918) 249 Fed. 319 .....5, 13, 29, 32, 34

L.

Leary *vs.* Blanchard (1860) 48 Maine 269..... 3, 8
Lee *vs.* Chillicothe Bank (1860) 15 Fed. Cas. 151.....3, 8, 16
Lloyd *vs.* Sigourney (1829) 5 Bing. 525..... 3, 7

M.

Manufacturers National Bank *vs.* Continental Bank (1889) 148 Mass. 553..... 14

N.

PAGE

National B. & D. Bank *vs.* Hubbell (1889) 117 N. Y. 384 ..... 5, 12, 13, 29, 40
Nyssa-Arcadia Drainage District *vs.* First National Bank (D. C. D. Ore.) (1925) 3 Fed. (2nd) 648.... 4, 13, 15

O.

Old National Bank of Evansville *vs.* German American National Bank of Peoria (1894) 115 U. S. 556, 562 ..... 4, 12, 15
Overton *vs.* Tyler (1846) 3 Pa. St. 346, 348..... 16, 39

P.

Peoples State Bank *vs.* Miller (Mich. 1915) 152 N. W. 257, 259..... 36

S.

St. Louis & San Francisco Railway Co. *vs.* Johnston (1889) 133 U. S. 566..... 38
Sweeney *vs.* Easter (1863) 68 U. S. 166..... 12, 14, 15, 16

T.

Taft *vs.* Bank (1899) 172 Mass. 363..... 40
Third Bank *vs.* Clark (1877) 23 Minn. 263..... 22, 27
Treuttel *vs.* Barandon (1817) 8 Taunt. 100..... 3, 7, 11, 19

U.

United States *vs.* American Exchange National Bank (D. C. S. D. N. Y.) (1895) 70 Fed. 232..... 13, 17
Upshur *vs.* Briscoe (1891) 138 U. S. 365..... 38

W.

White *vs.* Miners National Bank (1881) 102 U. S. 658 ..... 4, 6, 9, 12, 16, 23, 39

Index of Text Books Cited.

PAGE

Daniels, Negotiable Instruments (6th Ed.) Sec. 698-A, 698-5 ..... 12, 14

Halsbury, Laws of England, Vol. I, page 569; Vol. II, page 480 ..... 3, 7

Morse, Banks and Banking (6th Ed.) Sec. 245; 583 (C); 658 (C) 3, 6, 7, 20, 36

Paton's Digest of Legal Opinions & Banking Laws, N. Y. Sections 1423, 1424, 2735, 2738, 2747 ..... 4, 17, 21, 37, 41

Index of Statute Cited.

N. Y. Negotiable Instruments Law, Sec. 66 (L. 1909 Ch. 43, Sec. 66) 18